

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY ANN RAMOS,

Defendant.

No. 13-CR-2034-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that a certain witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe this witness and how much weight to give his testimony.

INSTRUCTION NO. 8

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 10

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 11

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

INSTRUCTION NO. 12

The Indictment in this case charges the defendant as follows:

Under Count 1, the Indictment charges that, on or about May 28, 2013, in the Northern District of Iowa, the defendant knowingly and intentionally distributed a mixture or substance containing a detectable amount of XLR-11, a Schedule I controlled substance.

Under Count 2, the Indictment charges that, on or about June 19, 2013, in the Northern District of Iowa, the defendant knowingly and intentionally distributed a mixture or substance containing a detectable amount of Alpha-PVP, a Schedule I controlled substance analogue, knowing that the substance was intended for human consumption.

Under Count 3, the Indictment charges that, on or about June 26, 2013, in the Northern District of Iowa, the defendant knowingly and intentionally possessed with the intent to distribute a mixture or substance containing a detectable amount of XLR-11, a Schedule I controlled substance.

Under Count 4, the Indictment charges that, on or about June 26, 2013, in the Northern District of Iowa, the defendant knowingly and intentionally possessed with the intent to distribute a mixture or substance containing a detectable amount of Alpha-PVP, a Schedule I controlled substance analogue, knowing that the substance was intended for human consumption.

Under Count 5, the Indictment charges that, on or about June 26, 2013, in the Northern District of Iowa, the defendant knowingly possessed a firearm in furtherance of a drug trafficking crime, specifically, possession with intent to distribute Alpha-PVP, as charged in Count 4 of the Indictment.

The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent.

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

Thus the defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

There is no burden upon the defendant to prove that she is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 13

The crime of distributing XLR-11, as charged in Count 1 of the Indictment, has two elements, which are:

One, on or about May 28, 2013, the defendant intentionally transferred XLR-11 to another person; and

Two, at the time of the transfer, the defendant knew that the substance transferred was a controlled substance.

It is not necessary that the government prove the defendant knew the substance was XLR-11 as long as she knew the substance was some controlled substance. It is sufficient that the defendant knew that the substance was some kind of prohibited drug. It does not matter whether the defendant knew the identity of the controlled substance.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1. Otherwise, you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 14

The crime of distribution of a controlled substance analogue, as charged in Count 2 of the Indictment, has two elements, which are:

One, on or about June 19, 2013, the defendant intentionally transferred a controlled substance analogue to another person; and

Two, at the time of the transfer, the defendant knew that it was a controlled substance analogue.

The government alleges that the defendant distributed Alpha-PVP and that Alpha-PVP is a controlled substance analogue. To prove that Alpha-PVP is a controlled substance analogue, the government must prove: (1) the chemical structure of Alpha-PVP is substantially similar to the chemical structure of a controlled substance in Schedule I or II; and (2) Alpha-PVP either has or was represented by the defendant to have a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system as a controlled substance in Schedule I or II.

The term “substantially similar” should be given its ordinary meaning. Note, however, that “substantially similar” does not mean “exactly the same.” Therefore, some level of difference is acceptable between the structure and effects of a controlled substance analogue and a scheduled controlled substance.

(CONTINUED)

INSTRUCTION NO. 14 (Cont'd)

To prove that the defendant knew that she possessed a controlled substance analogue, the government must prove: (1) the defendant knew that Alpha-PVP was intended for human consumption; and (2) the defendant knew (a) the chemical structure of Alpha-PVP is substantially similar to the chemical structure of a controlled substance in Schedule I or II; and (b) Alpha-PVP either has or was represented by the defendant to have a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system as a controlled substance in Schedule I or II.

The term “human consumption” refers to a person’s introduction of a substance into the person’s body through any method, including by smoking, snorting, injecting, inhaling, eating or drinking.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2. Otherwise, you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 15

The crime of possession with intent to distribute a controlled substance, as charged in Count 3 of the Indictment, has three elements, which are:

One, on or about June 26, 2013, the defendant was in possession of XLR-11;

Two, the defendant knew that she was in possession of a controlled substance; and

Three, the defendant intended to distribute some or all of the controlled substance to another person.

It is not necessary that the government prove the defendant knew the substance was XLR-11 as long as she knew the substance was some controlled substance. It is sufficient that the defendant knew that the substance was some kind of prohibited drug. It does not matter whether the defendant knew the identity of the controlled substance.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 3. Otherwise, you must find the defendant not guilty of the crime charged under Count 3.

INSTRUCTION NO. 16

The crime of possession with intent to distribute a controlled substance analogue, as charged in Count 4 of the Indictment, has three elements, which are:

One, on or about June 26, 2013, the defendant was in possession of a controlled substance analogue;

Two, the defendant knew that she was in possession of a controlled substance analogue; and

Three, the defendant intended to distribute some or all of the controlled substance analogue to another person.

The government alleges that the defendant possessed Alpha-PVP and that Alpha-PVP is a controlled substance analogue. To prove that Alpha-PVP is a controlled substance analogue, the government must prove: (1) the chemical structure of Alpha-PVP is substantially similar to the chemical structure of a controlled substance in Schedule I or II; and (2) Alpha-PVP either has or was represented by the defendant to have a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system as a controlled substance in Schedule I or II.

The term “substantially similar” should be given its ordinary meaning. Note, however, that “substantially similar” does not mean “exactly the same.” Therefore, some level of difference is acceptable between the structure and effects of a controlled substance analogue and a scheduled controlled substance.

(CONTINUED)

INSTRUCTION NO. 16 (Cont'd)

To prove that the defendant knew that she possessed a controlled substance analogue, the government must prove: (1) the defendant knew that Alpha-PVP was intended for human consumption; and (2) the defendant knew (a) the chemical structure of Alpha-PVP is substantially similar to the chemical structure of a controlled substance in Schedule I or II; and (b) Alpha-PVP either has or was represented by the defendant to have a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system as a controlled substance in Schedule I or II.

The term “human consumption” refers to a person’s introduction of a substance into the person’s body through any method, including by smoking, snorting, injecting, inhaling, eating or drinking.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 4. Otherwise, you must find the defendant not guilty of the crime charged under Count 4.

INSTRUCTION NO. 17

The crime of possessing a firearm in furtherance of a drug trafficking crime, as charged in Count 5 of the Indictment, has two elements, which are:

One, on or about June 26, 2013, the defendant committed the crime of possession with intent to distribute a controlled substance analogue, as charged in Count 4 of the Indictment; and

Two, the defendant knowingly possessed a firearm in furtherance of that crime.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing or helping forward. The phrase “in furtherance of” is a requirement that the defendant possess the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

If the government proves both of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 5. Otherwise, you must find the defendant not guilty of the crime charged under Count 5.

INSTRUCTION NO. 18

The term “distribute” means to deliver to the possession of another person. The term “deliver” means the actual or attempted transfer to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of distribution and does not concern itself with any need for a “sale” to occur.

INSTRUCTION NO. 19

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 20

The government is not required to prove the amount or quantity of the controlled substance or controlled substance analogue that the defendant possessed and/or distributed. The government only must prove that the defendant possessed and/or distributed a detectable amount of a controlled substance or controlled substance analogue.

INSTRUCTION NO. 21

The government is not required to prove that the defendant knew that her acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of the defendant’s words, acts or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that she believed there was a high probability that the “incense” and “Blue” substances were controlled substances or controlled substance analogues intended for human consumption and that she took deliberate actions to avoid learning those facts. Knowledge may be inferred if the defendant deliberately closed her eyes to what would otherwise have been obvious to her. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts. You may not find the defendant acted “knowingly” if you find she was merely negligent, careless or mistaken as to the nature and intended use of the substance.

INSTRUCTION NO. 22

You will note that the Indictment charges that the offenses were committed “on or about” certain dates. The government need not prove with certainty the exact dates or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the dates or period of time alleged in the Indictment.

INSTRUCTION NO. 23

You are instructed as a matter of law that, at all times relevant to Counts 1 and 3 of the Indictment, XLR-11 was a Schedule I controlled substance. You must decide whether the substance in question as to Counts 1 and 3 was XLR-11. In so doing, you may consider all of the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NO. 24

You are instructed as a matter of law that, at all times relevant to Counts 2 and 4 of the Indictment, MDPV was a Schedule I controlled substance.

INSTRUCTION NO. 25

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 26

I instruct you that possession of a large quantity of a controlled substance or controlled substance analogue supports an inference of an intent to distribute. Thus, in determining whether the defendant possessed a particular controlled substance or controlled substance analogue with the intent to distribute, you should consider whether the defendant knowingly and intentionally possessed a large quantity of that particular controlled substance. If you believe that she did, then you may, but are not required to, infer that she had the intent to distribute.

INSTRUCTION NO. 27

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 28

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decisions, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 29

Attached to these instructions you will find the Verdict Forms. The Verdict Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms in accord with the evidence and these instructions.

June 25, 2014
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa